

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KENNY SHEPPARD,	:	Case No. 1:13-cv-814
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Michael R. Merz
vs.	:	
	:	
WARDEN, WARREN	:	
CORRECTIONAL INSTITUTION,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS (Doc. 23) AND
SUPPLEMENTAL REPORT AND RECOMMENDATIONS (Doc. 30)
OF THE UNITED STATES MAGISTRATE JUDGE**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court, and, on November 14, 2014 submitted a Report and Recommendations (“R&R”). (Doc. 23). Petitioner objected to the R&R. (Doc. 26).

This Court then recommitted the case to the Magistrate Judge for reconsideration in light of the objections. (Doc. 28). Pursuant to such reference, the Magistrate Judge reviewed the objections, and, on February 5, 2015, submitted a Supplemental Report and

Recommendations (“Supplemental R&R”). (Doc. 30). Petitioner objected to the Supplemental R&R. (Doc. 32).¹

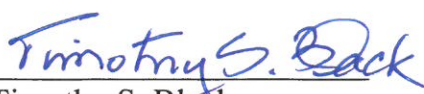
As required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such R&R and Supplemental R&R should be and are hereby adopted in their entirety. Accordingly:

1. The Report and Recommendations (Doc. 23) and Supplemental Report and Recommendations (Doc. 30) are **ADOPTED**;
2. Petitioner’s objections (Docs. 26, 32) are **OVERRULED**;
3. Petitioner’s petition is **DISMISSED WITH PREJUDICE**;
4. Because reasonable jurists would not disagree with this conclusion, Petitioner is **DENIED** a certificate of appealability;
5. The Court certifies that an appeal of this Order would be objectively frivolous, and therefore Petitioner will not be permitted to proceed *in forma pauperis*; and
6. This case is **CLOSED** on the docket of this Court.

¹ Petitioner essentially renews his previous objections, which were fully addressed in the Magistrate Judge’s Supplemental R&R. (Doc. 30). This Court adopts the Magistrate Judge’s reasoning as explained therein. Petitioner cites *State v. Mole*, 2013-Ohio-3131, 994 N.E.2d 482, to support his contention that there was insufficient evidence to convict. The *Mole* Court held that Ohio Rev. Code § 2907.03(A)(13), which prohibited sexual battery and stated that “[n]o person shall engage in sexual conduct with another, not the spouse of the offender when . . . the other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person,” violated the Equal Protection Clauses of the Ohio and United States constitutions. Petitioner notes that serving as a police officer does not, alone, provide a person with an unconscionable advantage over a minor. In fact, in *Mole*, the victim did not even know the Defendant was a police officer. Here, the State provided sufficient evidence on each and every element of the crime, including that which was required under *State v. Eskridge*, 38 Ohio St. 3d 56 (1988), as set forth in the R&R (Doc. 23 at 9-10, 16-21) and the Supplemental R&R (Doc. 30 at 5-7; 8-12).

IT IS SO ORDERED.

Date: 4/13/15


Timothy S. Black
United States District Judge